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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,426	01/23/2004	Shelly Lenna Bauerly	Bauerly 00100	6800

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Law Office of Ronald Shea  
2540 Country Hills Rd  
Apt. 192  
Brea, CA 92821

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 01/02/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 10/763,426	<b>Applicant(s)</b> BAUERLY, SHELLY LENNA	
	<b>Examiner</b> Tan Le	<b>Art Unit</b> 3632	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 22 October 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Amy J. Sterling/  
12/30/08

/Tan Le/  
Examiner, Art Unit 3632

Continuation of 10. Other (including any explanation in support of the above items):

Re 5: A concise statement of each of the grounds of rejection should be stated in this section. The ground of rejection as stated in the final rejection is incorrect. Any arguments or explanation regarding the claims to be appealed should appear in the "Argument" section under the appropriate required heading in that section.

Re 7: Only a clean copy of the appealed claims (without status identifiers) should be listed in the claimed Appendix.

Re 8: Under the "Evidence Appendix" only list copies of any evidence entered and relied upon in the appeal (See 37 CFR 41.37(c)). In the instant case, many evidence provided under "Exhibits" which have not been entered, considered or relied upon such as Exhibits 8, 9, 11 and even exhibit 12. Furthermore, the Brief does not contain the statement setting forth wherein the evidence presented in Exhibit Appendix was entered by Examiner. The examiner respectfully submits that the instant evidence, i.e., Exhibits 8, 9, 10, 11 has not been considered/entered by the Examiner because such evidence was submitted at the same time with arguments presented in the Appeal brief. Such evidences should be removed from the Appeal Brief. The rest of Exhibits which appear to be in the record during prosecution of the instant application.

Re 10: Above a few typical errors that Examiner is attempted to point out to be corrected before the Board of Patent Appeals. Applicant is respectfully urged to fully comply with the new rules of practice before the Board of Patent Appeals and Interference effective September 13, 2004 in 1286 OG 21 and 69 Fed Reg. 49959 (August 12, 2004).

The Declaration of Lenna Bauerly Under 37 CFR 1.116(e) and 1.68 filed on the same day of the Notice of Appeal filed (5/15/08) is acknowledged by Examiner.

T.L.